

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

RUSSELL W. CHEATER,)	
)	
Plaintiff,)	
)	
v.)	No. CIV-14-524-FHS-KEW
)	
CAROLYN W, COLVIN ¹ ,)	
Acting Commissioner Social)	
Security Administration,)	
)	
Defendant.)	

ORDER

On March 15, 2016, the United States Magistrate Judge for this District filed a Report and Recommendation in this case. An objection was filed on March 22, 2016. The objection argues there is no need to remand this case for the ALJ to explain his decision that Plaintiff's heart condition did not meet the requirements of a 4.02 listing. Defendant argues Plaintiff bears the burden to show that his impairment meets all of the requirements of the listing at Step Three and Plaintiff simply failed to do this.

The court has reviewed the Report and Recommendation filed by the Magistrate Judge and the Objection filed by Defendant. The ALJ clearly did not fully articulate his Step Three finding.

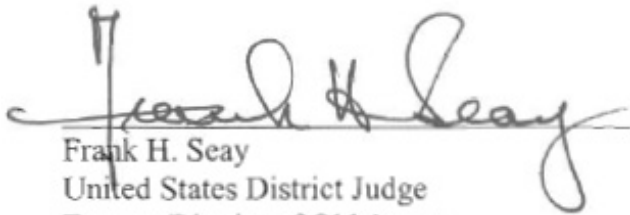
¹The Court has been informed by Defendant that on February 14, 2013, Carolyn W. Colvin became the Acting Commissioner of Social Security. Pursuant to Rule 25 (d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin is automatically substituted for Michael J. Astrue as the defendant in this action. Thus, this suit will proceed with this substitution in effect. See 42 U.S.C. Sec. 405 (g) ("Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.")

The court cannot find this error as harmless. As a result, the court finds further proceedings necessary. Accordingly, the Defendant's objection is overruled.

The Report and Recommendation suggest that the case be **REVERSED AND REMANDED** for further administrative proceedings. This Court finds the Report and Recommendation of the Magistrate Judge applied the proper standards and documents numerous references to the record which support the recommendation of the Magistrate Judge that the Secretary's decision be **REVERSED AND REMANDED**.

Upon consideration of the entire record and the issues herein, this Court finds and orders that the Report and Recommendation of the United States Magistrate Judge be **SUSTAINED** and adopted by this Court as this Court's Findings and Order. Accordingly, this case is **REVERSED AND REMANDED** to the defendant under the fourth sentence of 42 U.S.C. §405(g) for proceedings consistent with this order.

IT IS SO ORDERED this 7th day of April, 2016.


Frank H. Seay
United States District Judge
Eastern District of Oklahoma